IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 61 of 2004
With
SECOND APPEAL No. 51 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAKHMIBEN NANJI KOLI - Appellant(s)
Versus
KUMBHAR HAMABHAI LAKHABHAI - Defendant(s)

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Appearance :
MR MEHUL S SHAH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8 MR SURESH M SHAH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8
MS SEJAL MANDAVIYA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/09/2006

COMMON ORAL JUDGMENT

1. This judgement shall dispose of Second Appeal Nos.61

and 51 of 2004.

2. Second Appeal No.51 of 2004 is by the plaintiff who had filed Civil Suit No.125 of 1985 in the court of learned Civil Judge (J.D.), Una with the prayer that as the appellant was in possession of the property, the defendants of the said suit be restrained from interfering with his possession. The other side i.e. respondents in their capacity as plaintiffs filed Civil Suit No.91 of 1989 seeking relief that they being in possession of the property, the appellant be restrained from interfering with the possession. The suits were simultaneously tried and the learned trial court by its judgement dtd.19/10/1989 dismissed the Civil Suit No.125 of 1985 (Filed by the present appellants) holding that the present appellants were not in possession of the property on the date of the suit, but decreed the Regular Civil Suit No.91 of 1989 in favour of the present respondent directing the present appellants not to interfere with his possession.

3. Being aggrieved by the said judgement and decree in two cases, the present appellants filed Regular Civil Appeal No.146 of 1999 (Old No.138/96) and Regular Civil Appeal

No.148/99 (Old No.141/96). After considering the legal position and hearing the parties, it held that the learned trial court was absolutely justified in dismissing the appellants' suit and decreeing the suit filed by the respondent.

4. Still not satisfied, the appellants are before this Court in Second Appeal Nos.51 and 61 of 2004.

5. Mr.Shah, learned counsel for the appellants submit that as the Agreement dtd.17/1/1962 was bad in law and could not confer any right upon the present respondent and even if the possession was given to him under this document, the possession cannot be held to be legal and under the circumstances, the plaintiff cannot be held entitled to an injunction. He submits that in view of the provisions relating to land and land revenue, the said agreement could not be entered into between the parties and therefore, the courts below were wrong and unjustified in dismissing the present appellants' suit. It was also submitted that even if the plaintiffs / appellants were not in possession of the property on the date of the suit, then too, their suit for injunction was maintainable,

because the present plaintiffs were seeking an injunction in accordance with law against a person who was in possession but had no authority under the law to remain in possession.

6. So far as the document dtd.17/1/1962 is concerned, I must immediately record that the document clearly mentions that the possession of 10 Acres (25 Bighas) of land in dispute was handed over to the present respondent on the date of the agreement after receiving a sum of Rs.3000.00 (Rupees Three Thousand only) out of total consideration of Rs.4625.00 (Rupees Four Thousand Six Hundred Twenty Five only). It would altogether be a different thing that in a suit for possession filed by the plaintiff owner, the present respondent in his capacity as a defendant could or could not protect possession under sec.53-A of the Transfer of Properties Act, but undisputedly on the date of the suit, the present appellants were not in possession of the property.

7. It is trite law that an injunction would be granted against dispossession, waste or alienation of the property and in a case where the person claiming injunction is not in

possession, he cannot seek an injunction against dispossession.

8. So far as the entry of the present respondent upon the land is concerned, I must hold that the entry is under the document and if the entry is under the document dtd.17/1/1962, the present appellants cannot say that the entry was illegal or continues to be illegal. If the present appellants want to say so, they are required to obtain a declaration from a competent court of law that such entry of the present respondent on the land and execution of the document, were illegal. The plaintiffs have not filed the suit for possession but say that they would be entitled to injunction though they are not in possession of the property. I am unable to understand the argument raised by the learned counsel for the appellants. In a case like present where two courts granted interim injunction in favour of the appellants, if the very same courts on the evidence available on the record find that that the present appellants are not in possession of the property, then the interim relief would not overshadow the final relief. Any interim relief would always be subject to final relief. If finally the Court comes to the conclusion that

the plaintiff has failed to prove his possession on the date of the suit, then any interim relief in his favour would not decide the issue in his favour.

9. The submission lastly is that the court below was unjustified in holding that the present respondent acquired the title by adverse possession. In the opinion of this Court, the said findings must be understood in its true perspective and not otherwise. If the present appellants, if the law permits, file a suit for possession, then such question would be allowed to be raised, but at this stage, suffice it to say that the present appellants are not entitled to any decree or order in their favour.

10. Both the appeals are summarily dismissed with costs, in each case Rs.5000.00 (Rupees Five Thousand only), because I am of the considered opinion that the present appellant had been successfully restraining the present respondent from entering upon the land and did not allow the present respondent to enjoy the use of it.

11. The decree granted in favour of the respondent is maintained with a direction to the present appellants that

they would not be entitled to enter upon the land in dispute, the possession of which he had given to the present respondent on 17/1/1962. Both the appeals are dismissed. Consequently, Civil Application No.4718 of 2004 is rejected.

12. After the dictation was over, Ms.Mandaviya, learned counsel for the respondent submitted that the trial court did not grant any injunction in favour of the appellants, the appeal against that order was rejected and ultimately, Civil Revision Application preferred by the present appellants was also dismissed. She submits that no court ever granted any interim relief / injunction in favour of the present appellants. On the other hand, Mr.Shah says that this Court did not dismiss the Civil Revision Application, but directed the parties to maintain status-quo. However, I am simply recording the facts.

(R.S. GARG, J.)

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